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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re General Kinematics Corporation

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Serial No. 74/366,705

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F. William McLaughlin of Wood, Phillips, VanSanten, Clark & Mortimer for General Kinematics Corporation

David Stine, Trademark Examining Attorney, Law Office 103 (Michael Szoke, Managing Attorney)

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Before Simms, Chapman and Wendel, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On March 10, 1993, General Kinematics Corporation filed an intent-to-use application to register on the Principal Register the mark FINGER SCREEN for "vibrating screen separators for use in material classification" in International Class 7.

In the first Office action (dated June 15, 1993), the Examining Attorney indicated the original identification of

goods (“vibrating material classifying apparatus”) was indefinite, required a disclaimer of the word “screen”, and inquired whether the word “finger” had any significance in the relevant trade or industry. In response, applicant submitted an amendment to the identification of goods, a new drawing amending the mark to FINGER-SCREEN, and answering the Examining Attorney’s question as follows: “As for the inquiry concerning the word ‘finger,’ Applicant is unaware of any special significance attributable to this word when used in a trademark sense in combination with the word ‘screen.’” The Examining Attorney accepted the new drawing and the amendment to the identification of goods, deleted the Office entry of applicant’s disclaimer of the word “screen”, and allowed the application for publication, which occurred on April 12, 1994.

On June 30, 1994 the Assistant Commissioner for Trademarks granted a letter of protest regarding the alleged genericness of the applied-for mark, and restored jurisdiction to the Examining Attorney. In an Office action dated August 9, 1994, the Examining Attorney refused registration as merely descriptive under Section 2(e)(1) of the Trademark Act, and stated that “the proposed mark appears to be generic” making it incapable of identifying applicant’s goods, and noting that therefore the Examining

Attorney could not recommend an amendment under Section 2(f) or to the Supplemental Register.

Applicant ultimately filed a complete and proper amendment to allege use,[1] and a proper amendment to the Supplemental Register, both of which were accepted and entered by the Examining Attorney in an Office action dated January 2, 1996. On that date, the Examining Attorney also refused registration on the basis that the applied-for mark is generic, and is incapable of identifying applicant's goods and distinguishing them from those of others under Section 23 of the Trademark Act, 15 U.S.C. §1091. This refusal was made final in an Office action of July 3, 1997, from which applicant has appealed.

Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm.

The Examining Attorney submitted (1) photocopies of the five patents which the party filing the letter of protest sent to this Office as evidence that the term "finger screen" is generic for the involved goods, and (2) a printout from Lexis/Nexis of two additional patents (one in "Full" and one in "Kwic" format) which also utilize the term "finger screen" in a generic manner.

[1] The claimed dates of first use and first use in commerce are 1992.

The Examining Attorney contends that the term “finger screen” is generic of a general type of separator, which may be incorporated into a variety of different machines for different purposes; that is, that applicant’s goods may be referred to as “vibrating finger screen separators” to distinguish them from other generic types of vibrating separators which utilize other separating means. The Examining Attorney argues that based on the ordinary meaning of the component words, as well as applicant’s generic use of the term in its own patent (Patent No. 5,108,589), and generic uses of the term in patents owned by others, the term “finger screen” is not capable of functioning as a trademark for applicant’s goods.

Applicant contends that the Examining Attorney has submitted no evidence to show that the relevant public understands the term “finger screen” to refer to applicant’s goods, namely, “a large machine including a trough between a material input end and a discharge end.” (Applicant’s brief, p. 4). Applicant succinctly stated its position as follows (Brief, p. 7):

> Applicant’s point is that, while “finger screen” might arguably be descriptive for a separating element which is a component part of a vibrating screen separator for use in material classification, the term “finger screen” is not generic with respect to the vibrating screen

> separator itself. The element is simply an ingredient of the product at issue."

Applicant further argues that reference to wording in patents (including applicant's own patent) cannot be relied on to show that a term is generic because the writers of such material may through ignorance, carelessness or indifference use a trademark in a generic sense.

The test for determining whether a designation is generic, as applied to the goods set forth in the application, turns upon how the term is perceived by the relevant public; and this perception is the primary consideration in a determination of genericness. See Loglan Institute Inc. v. Logical language Group, Inc., 962 F.2d 1038, 22 USPQ2d 1531 (Fed. Cir. 1992). Determining whether an alleged mark is generic involves a two step analysis: (1) What is the genus of goods or services in question?, and (2) Is the term sought to be registered understood by the relevant public primarily to refer to that genus of goods or services?. See H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986); and In re Web Communications, 49 USPQ2d 1478 (TTAB 1998). Evidence of the public's understanding of a particular term may be obtained from any competent source, including

listings in dictionaries, trade journals, newspapers, and other publications. See In re Merrill, Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987).

Turning first to the ordinary meaning of the two words separately, the terms are defined as follows in The American Heritage Dictionary: (1) "finger" is "n. 6. Machinery. Any small projecting machine part"; and (2) "screen" is "n. 3a. A course sieve used for sifting out fine particles, as of sand, gravel, or coal" and "v. 3a. to separate or sift out by means of a sieve or screen."[2]

Turning then to applicant's Patent No. 5,108,589, applicant utilizes the term "finger screen" generically throughout this patent in referring to its separating means. The following are some excerpts from applicant's patent:

> "The apparatus also includes a separator having a plurality of longitudinally spaced finger screen sections between the input end and the discharge end...";
> "The finger screen sections each have a backbone extending from side to side...";
> "The finger screen devices also each have the forward ends of the fingers thereof overlapping the next forwardly adjacent finger screen device...";
> "With this arrangement, the material is conveyed along the trough and over successive ones of the finger screen

[2] The Board takes judicial notice of the dictionary meaning of the words "finger" and "screen". See University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., 213 USPQ 594 (TTAB 1982, aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

sections with particles up to the preselected size falling through the finger screen as the material moves...";

"Accordingly, the present invention is used in a material separating apparatus for separating particles of different sizes from a material. ... The separating means includes a plurality of longitudinally spaced finger screen means disposed between the input end and the discharge end...";

"Each of the finger screen means has forward ends of its fingers overlapping the next forwardly adjacent finger screen means..."; and

"...Fig. 4 is a side elevational view illustrating the a (sic) pair of longitudinally adjacent finger screen sections, Fig. 5 is a top plan view of a single finger screen section, Fig. 6 is a perspective view illustrating the relationship of a plurality of finger screen sections."

In addition, the record includes several patents owned by others which include generic uses of the term "finger screen," such as the following:

...they [the sand screens] may comprise so-called "finger screens". The finger screens are emplaced in the respective ports 91 and have many small apertures penetrating logitudinally of the screens and laterally through the ports 91. These finger screens are ordinarily formed of ceramic or other material that is resistant to corrosion and erosion, or abrasion; yet are foraminous, or permeable, to the flow of fluids therethrough. Patent No. 3,865,188 (method and apparatus for selectively isolating a zone of subterranean formation adjacent to a well);

Fluid entering through line 70 is passed through a finger screen 72 to trap dirt and debris particles which might otherwise foul the jets. Patent No. 4,114,206 (automatic swimming pool cleaning system); and

Any short vine segments and peanuts which were not separated previously, fall through third and fourth cylinders 7100 and 9100 onto a third vine slide 7101 disposed beneath the third and fourth separating cylinders and over second finger screen 2410. Second finger screen 2410 is identical in construction to first finger screen 2400 and allows separated peanuts, as well as some small foreign material to pass therethrough... Patent No.

5,205,114 (peanut combine and straw separator system for such a combine).

In a recent decision, the Board noted that, in making a determination as to whether a term is generic with reference to the involved goods, consideration must be given to the fact that a product may fall not only into a broad category of goods, but also a narrower category within the broad category. See In re Central Sprinkler Co., 49 USPQ2d 1194 (TTAB 1998).

Applicant's involved goods are identified as "vibrating screen separators for use in classifying materials"; and the evidence of record shows that a "finger screen" is one type of screen separator. That is, a "finger screen" is a particular type of separator within the broader category of all screen separators. The broad category of goods into which applicant's goods fall is screen separators (or vibrating screen separators); the narrower category of applicant's goods is "finger screen" separators.

In the patents included in the record before the Board, the term "finger screen" is used generically to refer to a device which separates materials of differing sizes, or separates solids from liquids. In addition, the dictionary definitions of these words show their common

ordinary meaning in the context of machinery. See Remington Products Inc. v. North American Philips Corp., 892 F.2d 1576, 13 USPQ2d 1444 (Fed. Cir. 1990).

It has been shown in the record before us that the term "finger-screen" is generic for a component which may be utilized in a variety of machines to separate or classify materials, and would be understood by the relevant public as referring to that type of component. Accordingly, we find the applied-for mark, FINGER-SCREEN, to be generic and incapable of distinguishing applicant's separator from those of others. See Micro Motion Inc. v. Danfoss A/S, 49 USPQ2d 1628 (TTAB 1998) (MASSFLO held generic for "flowmeters for the measurement of flow of mass of fluids"); Central Sprinkler, supra (ATTIC held generic for "automatic sprinklers for fire protection"); and In re Reckitt & Colman, North America Inc., 18 USPQ2d 1389 (TTAB 1991) (PERMA PRESS held generic for "soil and stain removers for permanent press fabrics").

We are not persuaded by applicant's argument that because "finger-screen" may not be the name of the whole machine itself, that therefore, the term cannot be found generic for vibrating screen separators as applicant identified its goods in the application. Applicant's identification does not encompass the machine as a whole.

Moreover, as the Examining Attorney stated in his brief on appeal, "applicant's goods clearly may be generically identified as finger screen separators, to distinguish them from other types of material classifier screens." (Brief, p. 3). That is, applicant's goods are generically identified in the identification of goods as a "screen" separator, and throughout applicant's own patent the terminology "finger screen" is used to generically identify the salient feature of this particular type of screen separator.

Applicant also argues, based on the case of Formica Corporation v. The Newnan Corporation, 149 USPQ 585 (TTAB 1966), that patents cannot be relied upon because the writers of things such as patent specifications could use a trademark in a generic sense out of ignorance or carelessness or indifference.[3] Applicant's argument is not persuasive. First, applicant's patent indicates that it was prepared by an intellectual property law firm. Presumably, applicant's own counsel would not be ignorant,

[3] The Board's specific comment from the Formica case, is as follows: "It is a matter of common knowledge, however, that writers of advertising copy, patent specifications, novels and other matter, either through ignorance, carelessness or indifference frequently use a trademark in a generic sense, i.e. to denote a type or class of an article rather than the source thereof."

careless or indifferent and use applicant's trademark in a generic sense in applicant's patent application.

Second, in the Formica case, the applicant had introduced numerous printed materials, including advertisements by retailers, advertisements by custom fabricators, patents issued by this Office, a novel, and a dictionary definition, all showing apparent misuse of opposer's mark FORMICA in lower case letters, and without any indication that the term was opposer's trademark. This is to be distinguished from the ex parte case now before us, where there is no evidence of general carelessness of use of the term throughout advertisements, dictionaries, and even novels. Rather, the term "finger-screen" is used in a generic sense throughout applicant's own patent, as well as those of others, demonstrating that the terms have ordinary meanings to the relevant public.

Decision: The refusal to register on the Supplemental Register is affirmed.

R. L. Simms

B. A. Chapman

H. R. Wendel
Administrative Trademark Judges, Trademark Trial and Appeal Board